

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>DRAYE D. DURHAM,</b>	:	
<b>Petitioner,</b>	:	
<b>vs.</b>	:	
	:	<b>CIVIL ACTION</b>
<b>JOSEPH J. PIAZZA; THE DISTRICT</b>	:	
<b>ATTORNEY OF THE COUNTY OF</b>	:	<b>NO. 07-4338</b>
<b>PHILADELPHIA; and, THE ATTORNEY</b>	:	
<b>GENERAL OF THE STATE OF</b>	:	
<b>PENNSYLVANIA,</b>	:	
<b>Respondents.</b>	:	

**ORDER**

**AND NOW**, this 9th day of September, 2009, upon careful and independent consideration of the *pro se* Petition for Writ of Habeas Corpus filed by petitioner, Draye Durham, pursuant to 28 U.S.C. § 2254 and Memorandum of Law in Support Thereof (Document No. 1, filed October 16, 2007), the Response to Petition for Writ of Habeas Corpus (Document No. 9, filed February 19, 2008), *pro se* petitioner's Reply (Document No. 13, filed April 8, 2008), and the Response to Petitioner's Reply (Document No. 15, filed April 17, 2008), and after review of the Report and Recommendation of United States Magistrate Judge Henry S. Perkin dated July 22, 2008 (Document No. 16, filed July 22, 2008), *pro se* Petitioner's Objection[s] to the Magistrate's Report and Recommendation (Document No. 19, filed October 7, 2008), and the Response to Petitioner's Objections (Document No. 23, filed December 1, 2008), for the reasons set forth in the accompanying Memorandum dated September 9, 2009, **IT IS ORDERED** as follows:

1. Petitioner's Objection[s] to the Report and Recommendation of United States Magistrate Judge Henry S. Perkin are **SUSTAINED** to the extent that Petitioner challenges the incompleteness of the state court record reviewed by Magistrate Judge Henry S. Perkin prior to the issuance of his Report and Recommendation;

2. The Report and Recommendation of United States Magistrate Judge Henry S. Perkin dated July 22, 2008 is **REJECTED**;

3. The *pro se* Petition for Writ of Habeas Corpus is **REMANDED** to United States Magistrate Judge Henry S. Perkin to obtain the entire state court record and to submit an amended report and recommendation based on a review of that record; and

4. Petitioner's Objection[s] to the Report and Recommendation of United States Magistrate Judge Henry S. Perkin dated October 7, 2008 are **OVERRULED** in all other respects without prejudice to petitioner's right to object, if warranted, to the amended report and recommendation.

**BY THE COURT:**

/s/ Honorable Jan E. DuBois  
**JAN E. DUBOIS, J.**